IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8661 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANJULABEN N. MAKWANA

Versus

COLLECTOR, AHMEDABAD & ANR.

Appearance:

1. Special Civil Application No. 8661 of 1994

MR MB GANDHI for Petitioner No. 1

MR AJ DESAI, AGP for Respondent No. 1

MR NAGIN N GANDHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/12/2004

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the

order passed by the Collector, Ahmedabad dated 06.07.1993 and also the order passed by the Special Secretary in Revision Application No. 27/93 confirming the order of the Collector. Though in the petition, the petitioner is Manjulaben N. Makwana, an affidavit was signed by her husband Natwarbhai Kalyanbhai Makwana. Subsequently, affidavit-in-rejoinder was also filed by Natwarbhai Kalyanbhai Makwana being husband of the petitioner.

2. It is the case of the petitioner that on 26.03.1979, an order was passed by respondent No.1 Collector in favour of respondent No.2 for giving grant of the land on a condition of indivisibility. The respondent No.2 did not carry out the construction and, therefore, the petitioner to whom the respondent No.2 was willing to transfer the land, made an application for the transfer and the Collector granted the same by his order dated 21.06.1992. As per the said order, the premium price of Rs. 3,394.40ps. was paid by the petitioner in the Govt. Treasury and the receipt to that effect was also issued.

3. Mr. M.B. Gandhi, learned advocate appearing for the petitioner submits that since it was a Govt. land and grant was given by the Govt. to respondent No.2, the property forever remained with the Govt. and the question of execution of the Sale Deed does not arise. However, the Collector while passing the order directed respondent No.2 to execute the Sale Deed in favour of the petitioner. The respondent No.2 did not execute the Sale Deed and as a result thereof and for want of property being transferred, the petitioner could not comply with the terms and conditions of construction over the land. The Collector therefore, again took into consideration its previous orders dated 01.06.1992 and 21.06.1992 and came to the conclusion that as per condition No. 6, the construction on the land was not started within six months and the same was not completed within the period of two years, the condition of the grant was, therefore, breached. The Collector cancelled the grant / permission which was granted in favour of the present petitioner and further directed the vesting of the land into respondent No.2 and suo-motu granted the land to respondent No.2 to construct over the land.

4. Being aggrieved by the said order, the petitioner has preferred Revision Application before the Special Secretary. By rejecting the said Revision Application, the Special Secretary vide his order dated 02.04.1994 has held that since the original grantee is still interested in putting up the construction over the land and so long

as the grant of transferor is existing, question of passing the order for transfer in favour of the petitioner does not arise. He has also held that the Collector could not call upon the grantee to execute the transfer/Sale Deed in favour of the new grantee and, hence, the order passed by the Collector was confirmed by the Special Secretary.

5. It is in the above background of the matter, the present petition was filed.

6. This Court has issued Rule on 05.09.1994 and ad-interim relief in the form of status quo was ordered to be continued.

7. On behalf of the respondent, an affidavit-in-reply was filed wherein it had been pointed out that for this very dispute, the petitioner has filed Regular Civil Suit No. 176 of 1993 in the Court of Civil Judge (J.D.), Dhandhuka on 04.04.1993, much prior to the filing of the present petition. These facts were not disclosed by the petitioner in the present petition. It is also stated that the respondent No.2 requires the land for her own use and purposes. The construction could not be made because of the illness of the husband and hence, the extension was sought for which was granted.

8. An affidavit-in-rejoinder was filed by the petitioner on 17.11.1994. Before that date, the suit was withdrawn by the petitioner on 03.08.1994 after filing the pursis stating that the petitioner has already filed the petition before this Court and status-quo qua possession as on 07.07.1994 was granted. However, this fact regarding withdrawal of the suit was not mentioned in the affidavit-in-rejoinder filed by the petitioner on 17.11.1994.

9. After having heard learned advocate appearing for the petitioner and learned A.G.P. for respondent No.1, the Court is of the view that there is a concurrent finding of fact by both the authorities, namely, the Collector as well as the Special Secretary and that the fact regarding filing of the suit as well as withdrawal of the suit were not disclosed by the petitioner and that the petition though was filed in the name of the petitioner, namely, Manjulaben N. Makwana, it was signed by her husband without any express authority to that effect and that even with regard to the payment of premium amount, there is a dispute as to who has made such payment. The Court does not find any merit or substance in the present petition.

10. It is, however, open for the petitioner to apply to the respondent authority for refund of the premium amount and the respondent authority after verifying the matter, take appropriate decision in the matter in accordance with law.

11. Subject to the above, the petition is dismissed. Rule is discharged without any order as to costs. Interim relief granted earlier is hereby vacated.

[K.A. PUJ, J.]

#Savariya#

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